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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,553	06/07/2001	Norbert P. Sonnek		6890

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Norbert P. Sonnek
56721 - 190th Street
Wells, MN 56097

EXAMINER

ROSENTHAL, DANIELLE S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 05/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant No.

09/875,553

Applicant(s)

SONNEK, NORBERT P.

Examiner

Danielle S. Rosenthal

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-3 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claim 1, drawn to a duck nesting house, classified in class 119, subclass 428.
 - II. Claim 2, drawn to a hollow pole, classified in class 362, subclass 431.
 - III. Claim 3, drawn to a segmented pole, classified in class 135, subclass 114.
2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as being used as a flag pole. See MPEP § 806.05(d).
3. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as being used as a tent pole. See MPEP § 806.05(d).
4. Inventions II and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP §

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806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because there is one segment. The subcombination has separate utility such as being used as a tent pole.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Mr. Norbert Sonnek on May 13, 2002 a provisional election was made without traverse to prosecute the invention of the duck house, claim 1. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2 and 3 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Please note that it appears that the features in claims 2 and 3 are part of the invention should be used as a combination with the house in claim 1. As such, claims 2 and 3 depend on claim 1 and therefore should state in the first line of each claim this dependency. For example claim 2 should read "a cylindrical duck nesting house made of white, plastic material as claimed in claim 1 further comprising: a round hollow pole made of white plastic material; said pole including one segment; a water closet fitting secured to the top of said pole..." This format means that claim 2 incorporates all the

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features of claim 1 and further includes additional features listed in claim 2 such as a pole.

Information Disclosure Statement

8. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. Therefore, if applicant desires all the references to go on the official record, applicant must fill out an official information disclosure form.

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)),

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and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or

REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a).

"Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

9. The disclosure is objected to because of the following informalities: the summary of the invention appears to be a detailed description of the invention. The summary of the invention should provide a broad overview of the invention and state the advantages of the invention. The detailed description of the invention should detail the invention including describing the drawings. In the application, applicant details the drawings and the invention in the "summary". It appears applicant should re-label this as "detailed description of the invention" and place this paragraph after the "drawing figures". Further, a summary of the invention should be added which incorporates some of the material used at the end of the "prior art" description. Please refer to the enclosed patents for examples of the proper format.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "consisting of" is considered a limiting term and infers that the invention contain only the elements listed in the claim and does not contain any additional elements. For example as written, "consisting of a canister and removable lid and handle" implies that the invention contains only a canister and lid and handle and no additional elements. Since the invention appears to contain additional elements including an egress hole and a mesh grid, the term "consisting of" does not appear appropriate. A definite and clear term would be "comprising". This term is used to incorporate all the listed elements of the claim and is not meant to limit the claim. For example, an appropriate format for claim 1 would be "A cylindrical duck nesting house made of white plastic material comprising: a canister and removable lid with handle; an entrance and egress hole in said canister; a mesh grid climbing ladder..." Once comprising is used, additional terms such as "providing" are no longer needed because comprising is used to refer to all the listed elements. Please refer to prior patents for examples of proper claim language.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Byrns (4,889,075) in view of Green (6,354,244) and further in view of Bennett (5,70,762).

Byrns discloses a cylindrical duck nesting house comprising a canister 12, 14; an entrance and egress hole 42 in the canister and a climbing ladder 28 secured to the bottom of the canister and secured to the vertical inside of the canister. Byrns discloses the claimed invention but does not expressly disclose the use of white, plastic material.

Bennett discloses a bird house made of PVC (Bennett, col. 5, lines 8-9), which is a white plastic material as described in applicant's disclosure. PVC is a known material which is light and does not absorb heat and thus is ideally suited for bird houses.

Bennett and Byrns are analogous art because they are from the same field of endeavor, that being bird houses. At the time of the invention, it would have been obvious to one having ordinary skill in the art to modify the duck house in Byrns to make the house of PVC. The motivation for doing so would have been to make the house lighter and reflect the sun to make the house more effective at attracting and housing birds.

Further, Byrns discloses the claimed invention but does not disclose a removable lid and handle. Green discloses a bird house with a removable lid 468 and handle (Green, Figs. 22A-I). Green and Byrns are analogous are because they are from the same field

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of endeavor, that being bird houses. At the time of the invention, it would have been obvious to one having ordinary skill in the art to modify the house in Byrns to include a removable lid and handle as shown in Green. The motivation for doing so would have been to make the house more effective by allowing the user to easily replace parts of the house. Still further, Byrns discloses the claimed invention but does not expressly disclose a mesh grid climbing ladder. However, Byrns does note that a "strip of wire mesh cloth" has traditionally been used as the climbing ladder (Byrns, col. 5, lines 13-14). In addition, Green discloses a bird house with a mesh grid 464. At the time of the invention, it would have been obvious to one having ordinary skill in the art to modify the climbing ladder in Byrns to include a mesh grid screen. The motivation for doing so would have been to provide a different type of ladder which is more effective at providing a climbing base for the ducks.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Isenberg (3,177,849), Bailey et al. (4,765,277), Oh (5,134,970), Freed (5,355,835), Flischel (5,878,537), Dawson (6,244,220), Christian et al. (6,311,643) disclose related bird house patents.


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle S. Rosenthal whose telephone number is (703)

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305-2765. The examiner can normally be reached on M-Th & every other F, 8:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached on (703) 308-2484. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


CHARLES T. JORDAN
SUPERVISOR, PATENT EXAMINER
TECHNOLOGY CENTER 3600

Danielle S. Rosenthal
Examiner
Art Unit 3644

dsr
May 15, 2002